

THE EFFECTIVE DATE OF THIS ORDINANCE IS MAY 30, 2008

ORDINANCE NO. 08-19-495

Zoning Text Amendment - ZT-07-15

**RE: To amend § 1-19-302 Resource Conservation District of
the Frederick County Zoning Ordinance**

PREAMBLE

The Board of County Commissioners of Frederick County, Maryland (BoCC) desires to amend § 1-19-302 of the Frederick County Zoning Ordinance to allow for an additional residential lot for parcels between 10 and 20 acres. The BoCC also desires to delete the existing RC clustering provisions.

On January 15, 2008, the BoCC approved Ordinance No. 08-05-481. Ordinance No. 08-05-481 amended the provisions of Frederick County Code Section 1-19-302 by increasing the minimum lot size in the RC District from 5 acres to 10 acres.

The BoCC desires to provide for an additional residential lot for parcels of between 10 acres and 20 acres of land which are located in the RC district. The BoCC finds that this will lessen any impact from Ordinance No. 08-05-481 on the owners of such parcels.

The BoCC further desires to delete subsection (E) from Section 1-19-302, thereby removing the clustering of residential lots in the RC district. The BoCC finds that clustering of lots in the RC district severely increases the impact of residential use on the resources sought to be protected by inclusion in the RC district.

The Frederick County Planning Commission held a public hearing on March 19, 2008. The Planning Commission recommended approval of ZT-07-15. They also recommended adding clarifying language provided by staff.

A public hearing was held by the Board of County Commissioners on this Ordinance on May 20, 2008. The zoning text amendment and the public hearing before the Board of County Commissioners were duly advertised. The public had an opportunity to comment on this Ordinance at these public hearings.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that Sections 1-19-290 and 1-19-302 of the Frederick County Code (2004) be amended as shown below.

§ 1-19-290. DESIGN REQUIREMENTS FOR SPECIFIC DISTRICTS.

~~* Lot area, width and yard requirements may be modified in accordance with the lot clustering provision, as permitted in § 1-19-302(5).~~

§ 1-19-302. RESOURCE CONSERVATION DISTRICT.

The following provisions shall apply to the Resource Conservation (RC) District.

(A) LOT AREA DETERMINATION FOR RESIDENTIAL USES

**(1) ON PARCELS, LEGAL LOTS OF RECORD AS OF
THE EFFECTIVE DATE OF THIS
ORDINANCE, AT LEAST 10 ACRES IN SIZE,**

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BUT LESS THAN 20 ACRES IN SIZE, ONE (1) RESIDENTIAL LOT AND A REMAINDER MAY BE CREATED BY SUBDIVISION. THESE LOTS SHALL HAVE A MINIMUM LOT SIZE OF 5 ACRES AFTER SUBDIVISION OF THE LOT, NO FURTHER DEVELOPMENT RIGHTS SHALL EXIST ON THE LOT OR THE REMAINDER, AND A NOTE SHALL BE PLACED ON THE RECORD PLAT TO THIS EFFECT.

(AB) *Sensitive area protection.*

(1) Areas with slopes of 25% grade and greater shall not be developed. Buildings and structures and parking areas shall not be located on slopes of 25% grade and greater.

(2) Floodplains and wetlands shall be protected in accordance with the standards and requirements set forth in Division 5, Floodplain District, regulations of this chapter.

(3) Habitats of threatened and endangered species, as identified by the Maryland Department of Natural Resources, shall be protected from development or disturbance. All subdivision and site development plans involving an area identified as a habitat site shall be referred by the county to the Maryland Natural Heritage Program for comment. On sites where a habitat is identified, a mitigation plan will be required to show that adverse impacts on habitat sites are minimized.

(BC) *Tree cutting and forestry activities.*

(1) Forest cutting or clearing activities in connection with land development shall be minimized. All activities to which the forest resource ordinance apply shall be subject to the regulations and requirements set forth in that ordinance. In addition to the forest resource ordinance requirements, no more than 40,000 square feet shall be cleared for each home site. For all permitted nonresidential uses, site development plan approval shall require that site clearing is minimized.

(2) Commercial logging and timber harvesting operations for which 5,000 square feet of soil is disturbed shall be subject to all state and local requirements, such as the following:

(a) Review and approval of a timber harvest plan by the Frederick County Forest Conservancy District Board;

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- (b) Approval of an erosion and sediment control plan by the soil conservation district.
- (c) Approval of a grading permit by the Frederick County Department of Public Works.
- (d) Where applicable, approval of a stream crossing permit by water resources administration.
- (e) All applicable local, state and federal regulations concerning commercial logging and timber harvesting.

(~~CD~~) *Streets*. New subdivision streets will not be permitted to be established in the resource conservation district, ~~except in accordance with the clustering provision of subsection (E).~~

(~~DE~~) *Driveways*. Approval of a grading permit by the Frederick County Department of Public Works shall be required for all driveways prior to site development to ensure that sediment and erosion control and stormwater management comply with soil conservation service standards.

- ~~(E) *Clustering of residential lots.*~~
- ~~(1) *Purpose and intent.*~~
- ~~(a) To encourage the conservation of sensitive elements in the resource conservation district through prudent siting of permitted uses and structures in order to mitigate environmental degradation and diminish the adverse impact to wildlife habitat and conservation resources.~~
- ~~(b) To provide for design elements that reduce the visual impact of permitted structures and uses in the resource conservation district.~~
- ~~(c) To provide for limited subdivision activity while minimizing the use of sensitive element areas and natural resources.~~
- ~~(d) To encourage the use of low impact subdivision design consisting of cluster lots, which are located on a portion or portions of the parcel subdivided and provide for the preservation of the remainder, which is the entire residual of the parcel being subdivided.~~
- ~~(2) *Design.*~~
- ~~The design of a cluster subdivision shall reflect the purpose and intent of the resource conservation district and to the extent feasible shall be designed to accomplish the following objectives:~~
- ~~(a) Result in a preserved area which is functional for its intended uses;~~
- ~~(b) Cluster lots in an arrangement which minimizes adverse impacts on the resource conservation areas;~~

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~~_____ (c) Avoid the need for removal of existing stands of trees, or geologic formations, particularly between the house site and public street or rights-of-way;~~

~~_____ (d) Preserve the rural and scenic quality of the landscape, particularly as viewed from public roads and vistas.~~

~~_____ (3) Requirements.~~

~~_____ (a) "Clustering" is an optional form of development at the discretion of the Planning Commission and shall be defined as directing subdivision of reduced sized lots on a single tract of land to meet the purposes of this section. The Planning Commission shall make the final determination as to whether a cluster development can be achieved in keeping with the purposes of this section.~~

~~_____ (b) The maximum density permitted for the cluster design shall be based on a standard design that complies with the minimum lot size, width and yard areas as specified in the resource conservation district. Based on that standard plan, a cluster concept plan can be proposed in which lot sizes, which are part of the cluster, are kept to a minimum in order to limit the impact on the remainder. Lot sizes shall average not more than 1.5 acres in size with no lots exceeding 2 acres. The Planning Commission shall have the authority to grant modifications to cluster lot sizes and setback requirements based on Health Department requirements and to encourage low-impact environmental design.~~

~~_____ (c) The Planning Commission may preclude clustering rights where subdivision under this section will not encourage careful siting of new homes to avoid impacting sensitive resources, where it will not produce optimal low-impact siting of new structures or where clustering will increase permitted dwelling units or not be consistent with the purpose of the resource conservation district.~~

~~_____ (d) All clusters of 6 or more lots may be served by an internal public street or common driveways, subject to Planning Commission approval, and shall not be stripped along an existing roadway.~~

~~_____ (4) Procedures.~~

~~_____ (a) Concept plan. For the subdivision of tracts eligible for cluster lots, 2 concept plans shall be submitted to staff a minimum of 60 days prior to the meeting at which the subdivision is to be considered by the Planning Commission. One concept plan shall show all standard rights and one concept plan shall show potential cluster rights to determine the feasibility of subdivision rights for the original tract(s) of land. Each plan shall be prepared in accordance with a "sample" cluster plan and show the following:~~

~~_____ 1. The lot layout (scale no smaller than 1 inch equals 100 feet, including building restriction lines and appropriate dimensions).~~

~~_____ 2. Lot access;~~

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3. Vicinity map (scale no smaller than 1 inch equals 2,000 feet, showing the tract(s) and total acreages included within the plan);
4. Topography with minimum 10 foot contours (USGS topographic interpretation is permitted for concept plan);
5. Development rights table indicating acreages and development rights, both standard and cluster, for each tract and the total;
6. Environmental data including soils, steep slopes, woodlands, wetlands, floodplain etc., for the cluster area and the remainder.

(b) The Planning Commission will have final approval over the location and layout of the proposed clustering of lots. The Planning Commission shall consider the following when reviewing concept plans.

1. *Sensitive elements.* The cluster plan should minimize the disturbance to sensitive elements on the subject parcel. Lot clustering sites should minimize disturbance to steeper sloped areas, perennial or intermittent stream buffers, habitat of threatened or endangered species, wildlife corridors, nontidal wetlands, reservoir watersheds, and areas of contiguous forest. Prospective lot clustering sites should use lesser sloped areas and minimize use of areas with sensitive resources. Lot clusters should be designed so as to lessen the visual impact of structures and uses from public roads and vistas.

2. *Design criteria.* The cluster plan should complement the surrounding environment and land uses by incorporating design elements that lessen the impact of structures and cleared space. The following criteria should be incorporated, unless staff verified site data is submitted that indicates that one or more of the following criteria is not applicable to the cluster site:

a. Locate no more than 50% of the lots along an existing county road or right of way. Additional cluster lots are to be sited away from public roads. If possible, additional cluster lots should utilize common means of access or rights-of-way;

b. Retain existing tree lines, hedge rows or rock formations that serve as buffers between proposed structures and county roads and rights-of-way;

c. Reduce visual prominence of proposed structures by building adjacent to woodland edges and not in the center of open space areas on a proposed cluster site;

d. Avoid building on ridge lines, unless forest buffers can be retained to reduce visual impacts;

e. Only open up views through selective tree and limb removal, as opposed to clear cutting.

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~~_____ (c) If the concept plan is approved by the Planning Commission, the developer may then proceed with platting of the clustered development in accordance with the subdivision regulations and the approved concept plan.~~

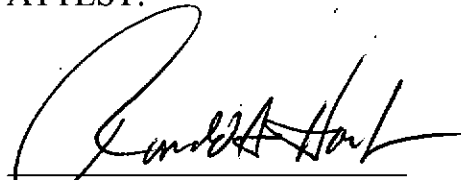
~~_____ (d) For each remainder preservation parcel, the recorded plat shall bear a statement indicating "the land lies within an approved cluster development and no further subdivision of the designated remainder preservation parcel is permitted unless rezoned." The use of the remainder preservation parcel shall only be for those uses listed as principal permitted use (P) activities in § 1-19-289 for the district in which the parcel is located~~

AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall take effect on May 30, 2008.

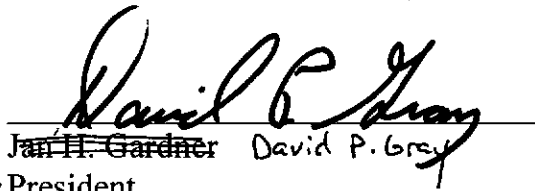
The undersigned hereby certifies that this Ordinance was approved and adopted on the 20th day of May, 2008.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND



Ronald A. Hart
County Manager



~~Jan H. Gardner~~

David P. Gray

Vice-President

MFC 6/26/08

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